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Presented to the Court by the foreman of the
Grand Jury in open Court, in the presence of
the Grand Jury and FILED in the U.S.
DISTRICT COURT at Seattle, Washington.

SEPTEMBER 1 2016
WILLIAM M. McCOOL, Clerk
By  Deputy

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

CR 16-239 RSL

Plaintiff,

INDICTMENT

v.

ZACHARY AUGUSTUS SMULSKI,

Defendant.

The Grand Jury charges that:

COUNTS 1-3

(Wire Fraud)

A. **Introduction**

At all materials times:

1. Soundpath Health, Inc. ("Soundpath"), was a health care benefit company located in Federal Way, Washington that administered Medicare health insurance plans.

2. ZACHARY SMULSKI was employed as the chief financial officer of Soundpath from approximately September 8, 2008 to April 25, 2012. As the chief financial officer, he owed a fiduciary duty to Soundpath.

1 3. Trucaris, Inc. ("Trucaris") was a Delaware corporation incorporated on
 2 April 5, 2011. Trucaris filed its registration with the Washington Secretary of State on
 3 October 5, 2011, and therein identified ZACHARY SMULSKI as its President.

4 4. On or about April 22, 2011, ZACHARY SMULSKI opened a business
 5 economy checking bank account at Bank of America/Merrill Lynch ("account *5204") in
 6 the name of Trucaris. ZACHARY SMULSKI identified himself on the application for
 7 the account as the chairman of Trucaris and his spouse as the chief financial officer.

8 5. Marquette Equipment Finance, LLC ("Marquette") was a financing
 9 company located in Midvale, Utah. Marquette provided sale-leaseback financing
 10 services to Soundpath. A sale-leaseback is a transaction in which the owner of assets
 11 sells the assets to an investor and then simultaneously leases the assets back.

12 6. On or about June 21, 2011, ZACHARY SMULSKI prepared a
 13 memorandum in which he recommended to Soundpath's Executive Finance Committee
 14 that Soundpath enter into a sale-leaseback agreement. ZACHARY SMULSKI
 15 represented that funds received from the sale-leaseback agreement would "be invested
 16 into restricted investment grade securities." Based, in part, on ZACHARY SMULSKI's
 17 representations, Soundpath's Board of Directors gave permission for ZACHARY
 18 SMULSKI to negotiate the sale-leaseback agreement.

19 **B. Essence of the Scheme and Artifice to Defraud**

20 7. Beginning at a time unknown, but no later than on or about September 15,
 21 2011, and continuing until on or about April 25, 2012, at Federal Way, within the
 22 Western District of Washington, and elsewhere, ZACHARY SMULSKI knowingly
 23 devised a scheme and artifice to defraud Soundpath and Marquette by means of
 24 materially-false and fraudulent pretenses, representations, and promises, and by means of
 25 the concealment of material facts.

26 8. The essence of the scheme was for ZACHARY SMULSKI to fraudulently
 27 represent to Soundpath and Marquette that funds obtained from the sale-leaseback
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1 agreement would be used on Soundpath's behalf and for Soundpath's exclusive benefit.
 2 In truth and fact, ZACHARY SMULSKI diverted over \$1.8 million dollars of the money
 3 from Marquette to an account belonging to a company under his control and subsequently
 4 attempted to use approximately \$631,500 of the funds to support his personal business
 5 endeavors without Soundpath's knowledge and permission.

6 **D. The Manner and Means of the Scheme**

7 The manner and means used to accomplish the scheme to defraud included the
 8 following:

9 9. On or about September 15, 2011, ZACHARY SMULSKI submitted a
 10 memorandum to Soundpath's Board of Directors recommending that the Board pass a
 11 corporate resolution that authorized him to enter into the sale-leaseback agreement with
 12 Marquette. In the memorandum, ZACHARY SMULSKI represented that funds received
 13 from Marquette would "be placed in a restricted investment account at US Bank." Based,
 14 in part, on ZACHARY SMULSKI's representations, the Board passed a resolution
 15 permitting ZACHARY SMULSKI to enter into the Marquette sale-leaseback agreement.

16 10. Despite having informed Soundpath that the funds from the sale-leaseback
 17 agreement would be placed in a restricted investment account at U.S. Bank, the following
 18 day, on or about September 16, 2011, ZACHARY SMULSKI, purportedly in his capacity
 19 as chief investment officer of Soundpath, prepared and executed a form that authorized
 20 and directed Marquette to transfer funds under the sale-leaseback agreement to Bank of
 21 America account *5204, located in Seattle, Washington.

22 11. ZACHARY SMULSKI deceived Marquette into believing Bank of
 23 America account *5204 was a Soundpath account when, in fact, the account belonged to
 24 Trucaris. For example, on September 22, 2011, ZACHARY SMULSKI sent an email
 25 from his Soundpath email account to employees of Marquette regarding the account. In
 26 the email, he wrote, "I had my staff double check with the bank and the bank account is
 27 set up to accept ACHs [(e.g., Automated Clearing House transfers)]." In truth and fact,

1 the use of the Trucaris account to receive the funds was carried out without Soundpath's
 2 knowledge and consent.

3 12. After Marquette transferred money to Bank of America Account *5204 at
 4 ZACHARY SMULSKI's direction, ZACHARY SMULSKI used much of the money to
 5 cover some of Soundpath's financial obligations, but retained control of a portion of the
 6 money. On November 21, 2011, ZACHARY SMULSKI transferred \$24,140.51 of the
 7 diverted funds in the Trucaris account to his spouse's business bank account.

8 13. In order to further divert and conceal the Marquette funds, on December 9,
 9 2011, ZACHARY SMULSKI and his spouse opened an individual investor account with
 10 Merrill Lynch ("account *2267") under the name Trucaris. On December 26, 2011,
 11 ZACHARY SMULSKI deposited \$620,000.00 of the diverted funds from the Trucaris
 12 Bank of America account into the Trucaris Merrill Lynch investment account.

13 14. Having diverted funds due and owing to Soundpath, ZACHARY
 14 SMULSKI attempted to use approximately \$631,500 of the funds to support his personal
 15 business interests. Among other things, ZACHARY SMULSKI circulated a business
 16 plan for a startup company called "Foundation Health" which claimed the company had
 17 raised \$631,500 in advance funding. The business plan further indicated that Marquette
 18 was an investor in the company. In truth and fact, neither Soundpath nor Marquette had
 19 invested any money in Foundation Health.

20 15. ZACHARY SMULSKI retained control of the \$631,500 until questions
 21 about the Marquette sale-leaseback arrangement were raised during an audit. In April of
 22 2012, Soundpath's controller confronted ZACHARY SMULSKI about missing
 23 paperwork regarding the leaseback arrangement. Shortly afterwards, ZACHARY
 24 SMULSKI produced the missing paperwork and returned the \$631,500 to Soundpath.

25 **E. Execution of the Scheme to Defraud**

26 16. On or about the below-listed dates, at Federal Way, within the Western
 27 District of Washington and elsewhere, ZACHARY SMULSKI, for the purpose of
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1 executing the aforementioned scheme and artifice to defraud and to obtain money by
 2 means of false and fraudulent pretenses, representations, promises and omissions of
 3 material facts, and attempting to do so, did knowingly and intentionally cause to be
 4 transmitted, in interstate commerce by means of a wire communication, certain signs,
 5 signals, and sounds, as described below, each transmission of which constitutes a
 6 separate count of this Indictment.

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Count	Date	Wire
1	9/22/2011	Email from ZACHARY SMULSKI in the Western District of Washington to Utah directing Marquette to transfer funds to Trucaris' Bank of America Account *5204.
2	9/23/2011	Request for ACH transfer of \$1,394,235 from Marquette's Wells Fargo account in Utah to Trucaris' Bank of America Account *5204 in the Western District of Washington.
3	9/23/2011	Request for ACH transfer of \$311,289.09 from Marquette's Wells Fargo account in Utah to Trucaris' Bank of America Account *5204 in the Western District of Washington.

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All in violation of Title 18, United States Code, Sections 1343 and 2.

COUNTS 4-5

(Money Laundering)

17. The Grand Jury realleges and incorporates, as if fully set forth herein, Paragraphs 1 - 16 of this Indictment.

1 18. On or about the dates set forth below, at Tacoma, and elsewhere, within the
2 Western District of Washington, ZACHARY SMULSKI did knowingly engage in
3 monetary transactions by, through, and to a financial institution, affecting interstate and
4 foreign commerce, in criminally-derived property of a value greater than \$10,000, that is
5 the following deposits, withdrawals, transfers, and exchanges of United States currency,
6 funds, and monetary instruments in the following amounts, such property having been
7 derived from a specified unlawful activity, that is wire fraud, in violation of Title 18,
8 United States Code, Section 1343, each transaction of which constitutes a separate count
9 of this Indictment:

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Count	Date	Transaction
4	4/17/2012	Issuance of \$610,000 check drawn on Trucaris' Merrill Lynch account *2267 made payable to Trucaris.
5	4/18/2012	Issuance of \$631,500 check drawn on Trucaris Inc.'s Bank of America account *5204 made payable to Soundpath Health.

All in violation of Title 18, United States Code, Section 1957.

A TRUE BILL:

DATED: *Sept 1, 2016*

Signature of Foreperson Redacted Per Policy of Judicial Conference

FOREPERSON

See Senn
17
18 ANNETTE L. HAYES
19 United States Attorney

Ah Eft
20
21 ANDREW FRIEDMAN
22 Assistant United States Attorney

J. F.
25
26 FRANCIS FRANZE-NAKAMURA
27 Assistant United States Attorney

28
Indictment - 7

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